

This letter discusses the sale of service and various fees. See 86 Ill. Adm. Code 140.101 through 140.109. (This is a GIL.)

April 13, 2006

Dear Xxxxx:

This letter is in response to your letter dated July 21, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I would like to request clarification on the taxability of the following items:

1. ***ROAD HAZARD WARRANTIES***

The warranty is optional and is charged separately on the tire ticket. This warranty would begin 90 days after the sale and is in addition to the manufacturer's warranty. It only covers road hazards such as running over a nail or a piece of glass and has nothing to do with defects in the materials. When a customer comes in with a road hazard claim, the fee would be prorated for the remaining percentage of tread left on the old tire, times the cost of replacing the tire. If the tire can be repaired it would be repaired without cost to the customer. In this instance would the road hazard warranty be subject to sales tax?

2. ***STATE IMPOSED TIRE RECYCLING/WASTE FEE/TAX***

In states where a fee/tax is charged for the sale of tires, is the state imposed fee/tax subject to sales tax? If a tire is returned and a proration given as described in #1 above, should the state imposed fee be charged?

3. ***COMPANY IMPOSED TIRE DISPOSAL FEE***

The fee will be a separately stated charge on the sales invoice. The tire fee will be in addition to any applicable state tire-recycling fee. We will only charge our customers who purchase tires from us and leave their old tires for disposal. The fee will be optional. If the customer wants to take their old tires with them, the fee will not be charged. What

we are actually doing is recouping our costs to dispose of the Hazardous Materials. In these instances would the company imposed tire disposal fee be subject to sales tax?

4. ***CORE CHARGES***

When a customer comes in and purchases either a starter or battery and does not give us their old starter or battery, we would charge them a core charge. If the customer comes back with the old part within a reasonable time period, we will refund the core charge to them. Would the core charge be subject to sales tax at the time the starter or battery is purchased? If the core charge is subject to sales tax, do we refund the sales tax along with the core charge when the customer comes back in for a refund? Are there any differences between different types of parts (i.e. New or remanufactured, batteries vs. parts)?

5. ***STORE AND MANUFACTURER COUPONS***

What is the taxability of store and manufacturer's coupons? The store coupon is a reduction of the selling price. We do not offer double coupon sales. We receive a refund from the manufacturer on the manufacturer coupons.

6. ***LABOR, REPAIRS, AND INSTALLATION***

We are in the business of repairing automobiles and installation of auto parts and accessories. Are these labor, repair, and installation charges subject to sales tax?

7. ***FREIGHT/SHIPPING AND HANDLING***

Are charges for freight and/or shipping and handling taxable?

8. ***STORAGE CHARGES***

Sometimes automobiles will be left at our service area for long periods of time due to different reasons (e.g. Customer does not have the money to pay for the repairs). In these instances, we would charge a per diem storage charge. Would these charges be subject to sales tax?

9. ***STATE INSPECTION AND EMISSION LABOR AND STICKERS***

Is the labor to perform state and emission inspections taxable? If so, if we charge the customer separately for the sticker, is the sticker taxable?

10. ***BATTERY PROTECTION/WARRANTY SERVICE***

When a customer purchases a battery, they have the option of purchasing a battery protection service for an additional fee. This service is originally performed when the new battery is installed. If in the future, the customer needs this service performed again, it will be done at no charge. The service consists of cleaning the battery terminals and posts, spraying the battery terminals to avoid corrosion and other protective services to increase the life of the battery and to keep it from corroding. Is this service taxable?

11. ***WARRANTIES***

There are three types of warranties that we sell-labor/service only, parts only, and parts and labor/service. What is the taxability of the sale of the warranty under each one of these scenarios? Also, what is the taxability of the work performed under the warranty?

12. ***AUTOMOTIVE REPAIRS INVOLVING EXTENDED WARRANTIES AND SERVICE CONTRACTS***

- a. When a vehicle owner obtains repairs under an Extended Warranty or Service Contract, is the repair work being paid for by the extended warranty or service contract administrator taxable?

- b. If the vehicle owner/contract holder has a deductible or pays for a portion of the repairs themselves, are those charges taxable?
13. ***AUTOMOTIVE REPAIRS AND SERVICES ON LEASED VEHICLES***
- a. We have customers who come in for service and repairs on vehicles that they lease from a commercial fleet leasing company. Automotive repairs and services are included in the lease and the lessor is paying for the services. Are these repairs and services covered under the agreement that is being paid for by the leasing company, taxable?
- b. There are situations in which an entity or nonprofit organization (e.g. American Red Cross or The Salvation Army) that has sales tax exemption status is leasing a vehicle from a commercial fleet leasing company, and the lease does not include repairs and services. The fleet leasing company is not responsible for the repairs and service, but is providing a central/consolidated billing service for their client, the vehicle lessee. Therefore we are sending the invoice to the fleet lessor, who in turn is remitting payment to us, and re-invoicing and collecting the funds from their client/lessee. Is the sales tax exemption held by the nonprofit entity valid in this scenario?
14. ***RESTOCKING FEE***  
If a customer returns a special order item, ABC sometimes charges a restocking fee equal to a percent of the original cost of the item. Is this fee taxable?
15. ***CLOTHING***  
Is clothing taxable? If so, is it taxed at a special rate or is there a dollar amount limitation?
16. ***FOOD***  
Are prepackaged snacks such as nuts, cookies, and candies, which are ready to eat and are sold off the shelf taxable? If so, are there any special tax rates or rules associated with the sale of food?
17. ***SODA/FRUIT JUICE/BOTTLED WATER***  
Are sodas, fruit juices, and bottled water from a small refrigerator near a register subject to sales tax? If so, are there any special tax rates or rules associated with these products?

Your prompt response to the above sales tax questions would be greatly appreciated. If you should require additional information please contact me.

## **DEPARTMENT'S RESPONSE:**

### Warranties/Recycling Fees

Information regarding warranty repairs may be found at 86 Ill. Adm. Code 140.141. The State of Illinois imposes a tire user fee, however, the fee imposed is not included in the gross receipts of the retailer subject to the Retailers' Occupation Tax Act, the Use Tax Act or any locally imposed retailers' occupation tax. See 415 ILCS 5/55.9.

### Tire Disposal Fees

The Illinois tire user fee is a tax liability incurred by the retailer as a cost of doing business. See 86 Ill. Adm. Code 130.450 and 415 ILCS 5/55.8.

### Core Charges

When an item of tangible personal property is sold at retail and includes a core fee, the full retail-selling price of the item, including the core fee, is subject to Retailers' Occupation Tax liability. The fact that part of the gross receipts from the sale of an item of tangible personal property is labeled a "core charge" does not change the taxable nature of the transaction. A core charge is merely considered part of the charge for the sale of the new part and is always taxable.

Please note that the tax consequences are different if the customer provided the "core" to the retailer at the time of purchase. In that situation, the core would be considered to be a like kind trade-in and no core charge would be made. It is possible that the customer will not take the old core back. However, if a core is returned by a purchaser for a refund of the core charge, the entire amount of the core charge should be refunded along with any tax paid by the purchaser. If a partial refund is provided (such as for a prorated battery or damaged return) the amount of tax relating to the partial refund amount should also be refunded to the purchaser.

### Coupons

If a vendor is reimbursed in full or in part for the value of the coupon, the reimbursement amount will be subject to sales tax. See 86 Ill. Adm. Code 130.2125(b)(2).

### Labor, Repairs, and Installation

If no tangible personal property is being transferred to the customers, then no Illinois Retailers' Occupation Tax, Use Tax, Service Occupation Tax, nor Service Use Tax would apply. However, tangible personal property that is transferred incident to a service is subject to Service Occupation Tax or Use Tax liability. See 86 Ill. Adm. Code 140.101 through 140.109.

### Freight/Shipping and Handling

For information regarding freight, shipping and handling charges, please see the Department's regulations at 86 Ill. Adm. Code 130.415.

### Storage Charges

If no tangible personal property is being transferred to the customers, then no Illinois Retailers' Occupation Tax, Use Tax, Service Occupation Tax, nor Service Use Tax would apply. However, tangible personal property that is transferred incident to a service is subject to Service Occupation Tax or Use Tax liability. See 86 Ill. Adm. Code 140.101 through 140.109.

### State Inspection Labor and Stickers

For labor charges, please see above responses. Service Occupation Tax or Use Tax may be incurred on the cost price of the stickers transferred incident to the service provided. See 86 Ill. Adm. Code 140.101 through 140.109.

### Maintenance Agreements

Without review of the actual agreement the Department is unable to issue a response to this particular question. In general, when providing maintenance service under a maintenance agreement, the retailer pays tax on the cost price of any parts or materials transferred incident to the maintenance contract. Consequently, the customer is not charged tax on the parts or labor. If the maintenance agreement is purchased separately from the equipment, performance under the agreement is considered a sale of service. Under the Service Occupation Tax, when a serviceman enters into an agreement to provide repair service for a particular piece of equipment for a stated period of time, the serviceman pays tax to his supplier on the cost price of tangible personal property transferred incident to the completion of the maintenance agreement. Again, the customer is not charged tax on the parts or labor. See 86 Ill. Adm. Code 140.301(b)(3).

The Service Occupation Tax would apply in a repair situation not covered by a maintenance contract. See 86 Ill. Adm. Code 140.101 through 140.109.

#### Repairs of Leased Vehicles – Exempt Organizations

See 86 Ill. Adm. Code 140.101 through 140.109 for information regarding the Service Occupation Tax. In general, if the person or entity that is billed for the repair is not an exempt organization, then Service Occupation Tax liability or Use Tax liability will be incurred. See 86 Ill. Adm. Code 140.125. If the organization presents a valid Department issued exemption number, then the repair may result in a non-taxable transaction. For information regarding Department issued exemption numbers, please see general information letter ST 05-0140-GIL which may be found on the Department's internet website under the heading of "Laws/Regs/Rulings."

#### Restocking Fees

When a retailer makes a charge for restocking or reshelving returned merchandise, the receipts retained by the retailer to cover the restocking or reshelving fee are not considered taxable gross receipts for purposes of the Retailers' Occupation Tax (sales tax). When a customer returns merchandise to the retailer, the retailer should refund all of the sales tax to the customer even though he will not be refunding all of the purchase price because of his restocking or reshelving policy.

#### Clothing

Retailers' Occupation Tax and any local occupation tax would apply to the sale of clothing. The State rate is 6.25%.

#### Foods/Soft Drinks

Information regarding the sale of food and soft drink may be found at 86 Ill. Adm. Code 130.310.

I hope this information is helpful. If you require additional information, please visit our website at [www.tax.illinois.gov](http://www.tax.illinois.gov) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess  
Associate Counsel